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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,376	06/18/2001	John Peter Morseman	31676.0248	6731

21967 7590 10/04/2004

HUNTON & WILLIAMS LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
1900 K STREET, N.W.  
SUITE 1200  
WASHINGTON, DC 20006-1109

EXAMINER
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COUNTS, GARY W

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/882,376

Applicant(s)

MORSEMAN ET AL.

Examiner

Gary W. Counts

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 3-14.Claim(s) withdrawn from consideration: 1,2.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **Advisory Action**

Continuation of 5 NOTE: Applicant asserts that the Applicants' cross-linked allophycocyanin product may be used for standard binding assays with no difference in these binding assays from the binding assay results known in the prior art. Applicant provided nine (9) abstracts of papers published from 1994-2000, which describes the use of allophycocyanin in flow cytometric assays which do not involve time resolved fluorescence. These abstracts are not found persuasive because they are not clear on whether or not the allophycocyanin used in the assays is the native form of allophycocyanin or cross-linked allophycocyanin. The abstracts merely disclose the use of allophycocyanin without disclosing what type of allophycocyanin is used.

Applicant also states that Applicant's product was sold for use in a variety of assays other than time-resolved fluorescence assay. This is not found persuasive because Applicant has not disclosed that the product was not sold for use in time-resolved assays.

Applicant further argues that one skilled in the art with access to the Park et al reference would not have any reason to make the modification of using a reagent in a time-resolved fluorescence assay that had not been exposed to strong chaotropic agents during the process of preparing the reagent. This is not found persuasive because of reasons of record and further because Applicant has not provided evidence to support the statements there is other known art uses for cross-linked allophycocyanin. Therefore, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art to select the cross-linking agent as described in the statement


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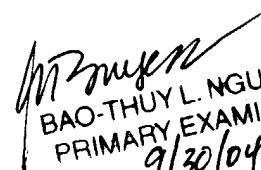
provided by Applicant (see previous office action) as an alternative for the cross-linking agent of Parks et al. And it appears that both cross-linking agents would perform equally well in Time-Resolved Fluorescence Assays, therefore a skilled artisan would have a reasonable expectation of success in selecting either cross-linking agent for performing the assay.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W. Counts whose telephone number is (571) 2720817. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gary Counts  
Examiner  
Art Unit 1641  
September 22, 2004

  
BAO-THUY L. NGUYEN  
PRIMARY EXAMINER  
9/30/04